IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 1294 OF 2007.
IN
SUIT NO.1784 OF 2005.

Suyojit Estate & Trading Pvt.Ltd. ... Plaintiff.
Versus.
Roshan Jehangir Lentin and
Samir N.Bhojwani. ... Defendants.

Shri S.U.Kamdar, with Ms.Tamhane i/by Shri R.D.Suvarna for the Plaintiff.

Shri Janak Dwarkadas, Senior Advocate with G.S.Godbole i/by Negandhi Shah and Himayatullah for the Defendant No.2.

CORAM : ABHAY S.OKA, J.

DATED : 3rd October, 2007.

P.C.:

1. Heard the learned Counsel appearing for the Plaintiff in support of the Chamber Summons. It is stated that the 1st Defendant is duly served with the Chamber Summons. None appears for the 1st Defendant. I have also heard the learned Senior Counsel appearing for the 2nd Defendant who has opposed the Chamber Summons.

2. The Plaintiff initially filed the present suit as against the 1st Defendant for a declaration that the agreement dated 27th May 1993 executed by the predecessor-in-title of the 1st Defendant in favour of the Plaintiff was valid and subsisting and the purported termination of the said agreement by the 1st Defendant is illegal, bad-in-law. Another prayer is for specific

performance of the said agreement.

3. After the Plaintiff moved this Court for grant of ad-interim relief, Chamber Summons No.975 of 2005 was taken out by the Plaintiff for amendment of the plaint. By the said amendment, the 2nd Defendant who is the transferee from the 1st Defendant on the basis of the sale deed dated 8th July 2005 was impleaded as a party. Various averments were sought to be incorporated for challenging the said deed of conveyance. A prayer for interim relief as against the 2nd Defendant was sought to be added by the Chamber Summons. Amendment applied for by way of the said Chamber Summons was allowed by this Court and amendment has been carried out.

4. The present Chamber Summons has been taken out for seeking further amendment to the plaint. It is pointed out that the deed of conveyance dated 8th July 2005 refers to the alleged agreement of sale dated 31st July 2003 executed by the 1st Defendant in favour of the 2nd Defendant. By the amendment proposed by this Chamber Summons certain averments are sought to be added for challenging the deed of conveyance dated 8th July 2005 as well as for challenging the agreement dated 31st July 2003. It is submitted in the affidavit-in-support of the Chamber Summons that due to inadvertence when the earlier Chamber Summons was filed a specific prayer

seeking declaration as regards the deed of conveyance dated 8th July 2005 was not incorporated. By the proposed amendment the Plaintiffs are seeking to incorporate prayers for seeking declaration that the deed of conveyance as well as the aforesaid agreement are illegal, null and void. A prayer is sought to be added for cancellation of the said documents.

5. The amendment is objected to mainly on the ground that when the earlier Chamber Summons was filed, a copy of the said deed of conveyance was available with the Plaintiff and therefore, in the earlier Chamber Summons itself the amendments which are sought by the present Chamber Summons could have been incorporated. It is submitted that by the present amendment a declaration is claimed as regards the Agreement dated 31st July 2003. It is submitted that the said prayer is barred by limitation. It is submitted that by the present amendment, the Plaintiffs are trying to introduce new facts and new cause of action.

6. I have carefully considered the submissions. By the amendment allowed under the earlier Chamber Summons, the Plaintiff was allowed to raise various contentions regarding the illegality of the aforesaid deed of conveyance. A specific contention is raised by the earlier amendment that the alleged agreement for sale

between the 1st and 2nd Defendants is a got up and fabricated document. There is a specific challenge incorporated as regards the said agreement and the said sale deed in clause (g) of paragraph 52 of the plaint. The 2nd Defendant was impleaded by virtue of the earlier amendment.

7. By the present amendment, the Plaintiff desires to incorporate in paragraph 52 of the plaint further challenge relating to the said deed of conveyance and the agreement. A perusal of the text of the amendment shows that the proposed amendment is consistent with the averments incorporated in the plaint by virtue of the earlier amendment. It is not the case of the 1st Defendant that the Plaintiffs were aware of the execution of the agreement of sale dated 31st July 2003 three years prior to the date on which the present Chamber Summons is lodged. Merely because the amendment which is proposed to be incorporated by the present Chamber Summons could have been incorporated while filing the earlier Chamber Summons is no ground to deny the prayer made in the present Chamber Summons. Moreover, the concerned Defendants can always file written statement and raise a plea of bar of limitation.

8. It is true that there is some delay in taking out the present Chamber Summons in the sense that some

of the averments which are sought to be incorporated by way of the present Chamber Summons could have been incorporated by the earlier Chamber Summons. Hence the Chamber Summons deserves to be allowed, subject to payment of costs by the Plaintiff to the 2nd Defendant.

9. Hence the following order is passed:

i) Chamber Summons is made absolute in terms of prayer clause (a) subject to the Plaintiff paying costs of Rs.10,000/- to the 2nd Defendant within a period of four weeks from today. Amendment to be carried out within a period of two weeks from the date on which the amount of costs is paid by the Plaintiff to the 2nd Defendant.

ii) Notice of Motion No.1454 of 2005 be listed on 1st November 2007.

Judge.